

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

_____	)	
In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	RM-11293
	)	
	)	RM-11303
_____	)	

**COMMENTS OF MI-CONNECTION COMMUNICATIONS SYSTEM**

**Introduction & Background**

MI-Connection Communications System ("MI-Connection") respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking (the "NPRM") soliciting comment on the appropriate changes, if any, the Commission should make to its implementation of section 224. In particular, the NPRM seeks comment on the Commission's tentative conclusion that attachments used for broadband Internet access service should be subject to a single rate, regardless of the platform over which those services are provided, and that that rate should be higher than the cable rate but no higher than the telecommunications rate.

MI-Connection is an interlocal agency formed by the towns of Davidson, Mooresville and Cornelius, and the county of Mecklenburg, located in the Lake Norman region north of Charlotte, North Carolina. In December 2007, MI-Connection acquired through the bankruptcy process the cable system serving their residents which was formerly owned and operated by a subsidiary of Adelphia Communications Corporation. The MI-Connection system is a small

cable system, serving approximately 15,500 cable subscribers. The system also provides broadband Internet access service to approximately 9,000 subscribers. MI-Connection does not own any poles, and it currently has attachments to poles owned by several different electric utilities and telephone companies.

MI-Connection submits that the Commission does not have legal authority under existing law to adopt a single rate for pole attachments used for broadband Internet access service.

Mi-Connection emphasizes that it and other small cable operators have unique and important interests that are at risk in this docket. As a small, government-owned cable system and a recent entrant to the market, MI-Connection could suffer severe and unanticipated financial impacts if the Commission adopts a single rate for pole attachments used for broadband Internet access service which decreases MI-Connection's cash flows from operations. This rate increase would be particularly financially harmful to small systems, and would discourage the deployment of broadband and non-commercial services in the very areas most underserved in the nation. Accordingly, if the Commission does choose to adopt such a rate, MI-Connection submits that small systems and those with high levels of non-commercial services should be exempt from the rate's application, for the reasons set out more fully below.

**I. THE FCC DOES NOT HAVE THE AUTHORITY TO IMPOSE A UNIFORM RATE FOR POLE ATTACHMENTS USED TO PROVIDE BROADBAND INTERNET ACCESS SERVICE.**

The NPRM "tentatively conclude[s] that all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service...." NPRM at ¶ 36. That rate, the NPRM states, should be higher than the existing cable rate. *Id.* The Commission goes on to state in a footnote that "[a]ttachments used for broadband Internet access

service includes (*sic*) attachments used to provide broadband Internet access service as part of a bundled package of services.” NPRM at ¶ 36, FN 108.

Commissioner McDowell, in his statement accompanying the FNPRM, cautioned that the Commission “must meet [its] statutory obligations. In this situation, Section 224 contains standards for determining both the cable rate and the telecom rate; yet, the *Notice* tentatively concludes that there should be a single rate for all attachments used to provide broadband Internet access service. As always, I look forward to carefully analyzing the legal arguments that support and oppose development of a uniform rate for all pole attachments.”

The Commission’s proposals do not comport with the requirements of Subsections 224 (d) and (e). Further, the Commission’s reliance on Section 706 of the Telecommunications Act of 1996 for support for its “broadband” rate proposal is misplaced. NPRM at ¶ 36. Section 706 pertains only to telecommunications, and does not apply to cable services or information services. And it does not add to the Commission’s powers. In the *Advanced Services Order*, the Commission specifically stated that:

in light of the statutory language, the framework of the 1996 Act, its legislative history, and Congress’ policy objectives, the most logical statutory interpretation is that section 706 does not constitute an independent grant of authority. Rather, the better interpretation of section 706 is that it directs us to use, among other authority, our forbearance authority under section 10(a) to encourage the deployment of advanced services.<sup>1</sup>

We anticipate other commenters will make detailed legal arguments on the legality of the Commission’s proposal. Instead of duplicating those arguments, we reserve the opportunity to reply to those arguments in the Reply round. For now, MI-Connection asks the Commission to

---

<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, CC Docket No. 98-147, 13 FCC Rcd 24012, 24044-8 (F.C.C. 1998) (*Advanced Services Order*).

focus on the serious negative economic impacts that the adoption of a uniform rate would impose on small systems like MI-Connection.

## **II. A UNIFORM RATE WOULD DISCOURAGE SMALL CABLE SYSTEMS AND MUNICIPAL BROADBAND DEPLOYMENT.**

In several places in the NPRM, the Commission seeks comments on the effect of its proposals on small entities.<sup>2</sup> The Commission also seeks comments on the effect of its proposals on municipal broadband providers.<sup>3</sup> As discussed above, MI-Connection is both small and municipally-owned, and it does not own its own poles. Hence, MI-Connection welcomes the opportunity to provide comments to the Commission on these issues. MI-Connection submits that small systems will be negatively and disproportionately impacted by any uniform rate proposal. This warrants different treatment for small cable systems.

First, due to economies of scale inherent in the cable business, small entities (government or private) have higher fixed costs per subscriber, and are less profitable, so they will have a more difficult time absorbing large increases in pole attachment rates which are the inevitable result of the Commission's proposal.<sup>4</sup>

---

<sup>2</sup> See NPRM at ¶ 16 (“We also seek comment on claims that small and rural incumbent LECs are particularly at a disadvantage [in rate negotiations with electric utilities].”); ¶ 31 (“We also invite comment on the possible effect on small entities from adopting a single rate.”); ¶ 36 (“We also seek comment on the possible economic effect on small entities of adopting this tentative conclusion [that the uniform rate should be higher than the current cable rate].”)

<sup>3</sup> See NPRM at ¶ 35 (“We seek comment on the extent to which municipalities lease pole attachments for municipal broadband purposes or other services such as telecommunications services. We also seek comment on the impact that the tentative conclusion herein might have on municipalities seeking to provide their residents municipal broadband or other services like telecommunications services.”).

<sup>4</sup> The Commission's proposal for a “broadband” rate practically guarantees that the “cable” rate will no longer be available to most if not all cable systems. In rural and underserved areas, cable service is more economically viable when it is bundled with cable modem and VoIP services. Almost all cable systems, both small and large, are using the benefits of digital and

Second, small systems tend to serve rural and suburban communities where fewer subscribers are spread over wider geographic areas. Rural areas tend to require fewer poles per mile than urban areas because poles usually can be spaced further apart in rural areas.<sup>5</sup> However, this savings on the number of poles is more than offset by the significant decrease in potential subscribers (homes passed) per mile served in rural and suburban areas as compared to urban areas. As a result of this lower subscriber density, relatively more poles are needed to serve rural and suburban subscribers than are needed to serve the same number of subscribers in densely-populated urban areas.

A March 2007 study prepared for the Tennessee Advisory Commission on Intergovernmental Relations illustrates this point.<sup>6</sup> The study determined that the number of subscribers per pole typically can range from over 20 subscribers in high density areas to less than 0.1 subscribers in low density areas. Thus, for example, for providers with 2 or more subscribers per pole, a \$10 per year change in pole attachment rates would equate to less than \$0.50 per subscriber per month. But, for a provider with only 0.2 subscribers per pole, the same

---

fiber optic technology to realize these economies. As a result applying the proposed rule to “attachments used to provide broadband Internet access service as a part of a bundled package of services” will sweep up all, or almost all, cable systems into the new rate. NPRM at ¶ 36, FN 108. Any system that offers bundled services and has even a handful of cable modem customers in its system, will have attachments throughout its system that are “used for” broadband Internet access service, and are subject to the higher rate.

<sup>5</sup> MI-Connection estimates that in rural and suburban areas there may be 300 to 400 feet between poles, whereas in urban areas the poles may be every 150 to 200 feet.

<sup>6</sup> See “Analysis of Pole Attachment Rate Issues in Tennessee”, Submitted by Commission without Comment, March 2007, page 12-13 (available at [http://state.tn.us/tacir/PDF\\_FILES/Other\\_Issues/pole%20attachment%20rate%20issues.pdf](http://state.tn.us/tacir/PDF_FILES/Other_Issues/pole%20attachment%20rate%20issues.pdf)).

\$10 per year change would equate to more than \$4.00 per subscriber per month.<sup>7</sup> This demonstrates that higher pole attachment rates will hurt small systems disproportionately because small systems are located in lower density areas.

Third, the Commission's stated goal of encouraging deployment of broadband infrastructure will be undermined if the NPRM proposal is applied to government owned or small cable providers. New broadband infrastructure will make both non-commercial and commercial broadband services available in underserved inner city and rural areas, health clinics, schools etc. This particularly affects municipally owned systems which, by their very nature, are less driven by profit motives, and more oriented toward infrastructure deployment to enhance local and regional economic development and to address broader constituent needs and interests. As a result, government operated systems tend to dedicate more system capacity to the provision of non-commercial services (such as services to schools, public safety, health and welfare facilities) and to the provision of unprofitable or low profit services (i.e., services to populations that have been underserved due to the very market factors that have held back deployment of broadband to date). For example, MI-Connection is in the planning stages of an upgrade and rebuild of its system which will not only improve system performance and reliability, and enable it to launch new commercial services (with more standard and high definition digital channels, Video on Demand, telephony, etc.), but will also include an institutional network to provide non-commercial services for the local jurisdictions.

Cable television, voice and cable modem services are all essential sources of revenues to make non-commercial and marginal commercial operations successful. Thus, applying a higher pole attachment rate to a broad definition of broadband attachments will actually discourage

---

<sup>7</sup> *Id.*

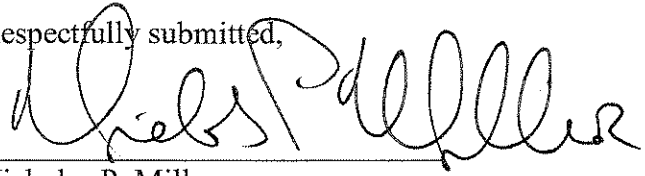
broadband deployment, and will further discourage the introduction of non-commercial and low margin services.

Systems that commit to building out broad geographical areas with relatively low population density, and that offer significant levels of local community services should be rewarded, not punished by higher pole rates. Higher pole rates will force a retrenchment in non-commercial and economically marginal services. Cable systems which offer significant amounts of non-commercial services should be encouraged. Their bundled services offered to high-priority, underserved populations should be exempt from the application of any “broadband” pole rate.

### **Conclusion**

For all the foregoing reasons, the Commission should refrain from adopting a uniform rate for “broadband” pole attachments. The Commission lacks the legal authority to do so. However, if the Commission does adopt such a rate, it should, at a minimum, exempt small cable systems, municipally owned cable systems, and cable systems that deploy high levels of non-commercial services from its application. Those systems should continue to be subject to the existing cable rate for their pole attachments. To do otherwise, will cause severe adverse economic impacts to small and government-owned cable systems, and will discourage the deployment of broadband services to the low density and low-income areas which most need them.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas P. Miller", written over a horizontal line.

Nicholas P. Miller

Gail A. Karish

MILLER & VAN EATON, P.L.L.C.

1155 Connecticut Avenue, N.W., Suite 1000

Washington, DC 20036-4306

(202) 785-0600

*Counsel for MI-Connection Communications  
System*

March 7, 2008

7101\07\00136672.DOC